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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,748	03/13/2001	Srinivas Gutta	US 010064	2712
24737	7590	09/08/2005	EXAMINER FLETCHER, JAMES A	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			ART UNIT 2616	PAPER NUMBER

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/805,748

Applicant(s)

GUTTA ET AL.

Examiner

James A. Fletcher

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

In re page 10, applicant's representative states: "In response to the Applicants' previous traversal of the holding of Office [sic] Notice by the Examiner, the Examiner cites col. 4, lines 52-56 of U.S. Patent No. 6,567,985, issued in the name of Ishii (hereinafter referred to as Ishii) for the equivalence between the number of frames and the passage of time. The Applicants would like to point out that this rejection formerly was an obviousness based on a combination of Dimitrova et al. with Yeo et al. The Applicants, respectfully, point out that this rejection no longer exists. The current rejection of Claims 11-12 and 41-42 is based on a combination of Marino et al. with Dimitrova et al. As discussed further infra, Marino et al. is not available as a reference either under the provisions of either 35 §U.S.C. 102 or 35 §U.S.C. 103. Therefore, this rejection is respectfully, traversed."

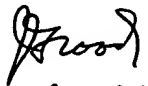
The examiner respectfully disagrees with several of the above statements. Although the non-final rejection did include a statement of Official Notice, the final rejection was based on the amended claims 1 and 31, making those claims, and all claims dependent thereon, subject to final rejection. Further, the examiner has not used any reference issued to Marino et al. Rather, the examiner used Martino et al (6,473,095), which was cited in the non-final office action and is therefore available as a reference under 35 USC 102 (b).

In re page 11, applicant's representative states: "The previous amendment submitted February 3, 2005 by the Applicants amended Claims 1 and 31 of the present application for invention. The amendments made were narrowing amendments and not broadening amendments. The Final Office Action dated June 15, 2005 includes a rejection under the provisions of 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,437,095 issued in the name of Marino et al. and U.S. Patent No. 6,137,544 issued in the name of Dimitrova et al. The Examiner states that U.S. Patent No. 6,137,544 issued in the name of Dimitrova et al. is incorporated by reference into U.S. Patent No. 6,473,095 issued in the name of Marino et al. It should be noted that both of these references were cited as prior art references prior [sic] the amendment submitted February 3, 2005 by the Applicant. There is no reason why this anticipation rejection should not have been made earlier. The only rejections based on prior art that were formerly made against the claims to the present invention were based on obviousness. The previous amendment submitted February 3, 2005 by the Applicants were narrowing amendments and not broadening amendments; therefore, these amendments could not have been the cause for a new anticipation rejection where only obviousness rejections formerly existed. As previously stated, both references were already cited. This anticipation rejection was not caused by any action on the part of the Applicants. Accordingly, the holding of finality is premature."

The examiner respectfully disagrees with this conclusion. The reason the anticipation rejection was not made sooner was because the original claim recitations did not require a search of the prior art that revealed the Martino reference. At the time of the non-final rejection, the examiner was unaware that Dimitrova et al was incorporated by reference into the Martino reference, and had no reason to be aware of that incorporation. The applicant's amendment required further search, which revealed the Martino reference, and the subsequent disclosure that Dimitrova et al was incorporated by reference into the Martino et al reference. The fact that the amendment was narrowing the scope of the claims and not broadening them does not change the fact that the amendment changed the scope of the claims, making a final rejection on the basis of the amended claim language proper. See MPEP 706.07(a).

In re page 12, applicant states: "The Applicants, respectfully, assert that Marino et al. do not qualify as prior art under the provisions of any of the paragraphs of 35 §U.S.C. 102. The Applicants further assert that Marino et al. do not qualify as prior art under any of the paragraphs of 35 §U.S.C. 103. Marino et al. was a pending, unpublished application at the time of filing for the present application for invention. Marino et al. was also commonly owned with the present application for invention at the time of filing for the present application for invention. Therefore, Marino et al. do not qualify as a prior art reference under any of the paragraphs of 35 §U.S.C. 102 or 35 §U.S.C. 103."

The examiner again respectfully disagrees. Martino et al, although sharing a common assignee with the present application, has a different inventive entity: none of the named inventors in Martino et al are named in the application, and therefore fits the definition of "by another." Further, the applicant's representative's statement is not sufficient according to MPEP 706.02(I), which states that the application and the reference must be owned by, or subject to an obligation of assignment to, the same person at the time the invention was made. The applicant's representative has stated that the application and the reference were commonly owned at the time of filing, which is not sufficient to disqualify the reference under 35 §U.S.C.103.


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